

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

|                                      |   |                                |
|--------------------------------------|---|--------------------------------|
| Patrick L. Booker,                   | ) | Civil Action No. 2:15-1189-MGL |
|                                      | ) |                                |
|                                      | ) |                                |
| Plaintiff,                           | ) |                                |
|                                      | ) |                                |
| v.                                   | ) | <b><u>ORDER</u></b>            |
|                                      | ) |                                |
| Lucius Miles and Richard Hayes, Sr., | ) |                                |
|                                      | ) |                                |
| Defendants.                          | ) |                                |
| _____                                | ) |                                |

Plaintiff Patrick L. Booker, (“Plaintiff”), an inmate in state custody proceeding *pro se*, brings the instant action pursuant to 42 U.S.C. § 1983 and South Carolina state law. (ECF No. 1). In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2), D.S.C., this matter was referred to United States Magistrate Judge Mary Gordon Baker for pre-trial handling. On July 13, 2016, the Magistrate Judge issued a Report and Recommendation, (“the Report”), (ECF No. 47), recommending that this Court deny Defendants’ Motion for Summary Judgment. (ECF No. 24). Defendants filed a timely Objection to the Report on August 1, 2016, (ECF No. 49), to which Plaintiff replied on August 11, 2016, (ECF No. 50), and the matter is now ripe for review by this Court.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). In the absence of a timely filed Objection, a district court need not conduct a *de*

*novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

In light of the standards set forth above, the Court has reviewed, *de novo*, the entire record in this case, including, in particular, the Magistrate Judge’s Report and Defendants’ Objection. The Court has considered each of Defendants’ objections and finds that none of Defendants’ arguments effectively counter the reasoned conclusions of the Magistrate Judge, particularly in view of recent case law in this circuit, including the Fourth Circuit Court of Appeals’ very recent holding in *Childress v. City of Charleston Police Dep’t*, 2016 WL 4056040 at \* 1 (4th Cir. July 29, 2016) (vacating a grant of summary judgment for defendant in an excessive force case based on district court’s “improper credibility finding,” where the record evidence presented a sufficient factual disagreement to necessitate submission to the jury). The Court, like the Magistrate Judge, is constrained to conclude that, given Plaintiff’s internally consistent complaint and affidavits, which directly contradict the factual account offered by Defendants, the Court cannot grant summary judgment on this record, for viewing the evidence in the light most favorable to Plaintiff, a reasonable jury could conceivably make a credibility determination different from the one that this Court might make and, on that basis, find for Plaintiff on his claims.

Based upon all of the forgoing, the Court concurs with the reasoning of the Magistrate Judge and adopts the Report and incorporates it herein by reference, (ECF No. 47), overruling Defendants’ Objection. (ECF No. 49). Accordingly, Defendants’ Motion for Summary Judgment, (ECF No. 24), is **DENIED**.

In view of the Court’s determination that this case will continue forward, the Magistrate

Judge is hereby directed to: (1) appoint counsel to represent Plaintiff, pursuant to the District Court process relating to payment of costs and fees; (2) enter a scheduling order, which shall include some period of additional discovery, during which time Plaintiff's counsel will be afforded an opportunity to address any discovery-related concerns; and (3) seek to obtain written consent from all parties that all further proceedings in this matter, including trial, be conducted before the Magistrate Judge.

**IT IS SO ORDERED.**

s/Mary G. Lewis  
United States District Judge

August 15, 2016  
Columbia, South Carolina